



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-496

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26802.

The Department of Human Services (the "department") has received a request for "copies of the Complaint Investigation Report, the second page of the Report of Contact, worksheets, notes (typed or handwritten), reports and any other records, documents and working papers completed by the investigators and monitors during their May 16-20, 21, 22, 23, 24 and 25, 1993, visits to Dublin Nursing Center in Dublin." You are uncertain whether the requestor is seeking only documents that department staff created or all attachments to the documents as well. You believe that title 40 of the Texas Administrative Code sections 90.216 and 90.323, which section 552.101 incorporates into the Open Records Act, govern the release of this information.

Section 90.216(a), title 40 of the Texas Administrative Code, deems confidential all reports, records, and working papers that the department uses or develops in an investigation of abuse, neglect, exploitation, or the violation of state or federal standards, among other things, by a nursing facility. However, the department may release to the

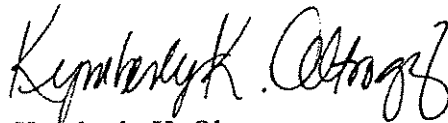
public a deidentified copy of the completed written investigation report.¹ 40 T.A.C. § 90.216(a)(1). Section 90.323(e) provides that departmental records are open to the public except for, among other things, reports of abuse and neglect, which are confidential to the extent that section 90.216(a) permits; names and related personal, medical, or other identifying information about a resident of a nursing facility; and information identifying complainants or informants. These regulations are consistent with section 242.127 of the Health and Safety Code, which provides confidentiality for "[a] report, record, or working paper used or developed in an investigation made under this subchapter" Such report, record, or working paper "may be disclosed only for purposes consistent with the rules adopted by the . . . designated agency." Pursuant to section 242.127 of the Health and Safety Code and sections 90.216 and 90.323 of title 40 Texas Administrative Code, the department must release to the requestor a deidentified copy of the completed written investigation report regarding the Dublin Nursing Center.

The department need not, however, release attachments to the written investigation report. As we concluded in Open Records Letter No. 94-392 (1994) (copy enclosed), "section 552.101 of the Government Code, in conjunction with section 242.127 of the Health and Safety Code, requires the department to withhold attachments to investigation reports created pursuant to chapter 242 of the Health and Safety Code." Thus, the department must withhold from the requestor all of the reports, records, and working papers that it used or developed in its investigation of the Dublin Nursing Center.

A few of the documents you have submitted to us for review are not responsive to the request. The department need not release these items to the requestor. We have marked the nonresponsive documents for your convenience.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

¹"The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation." 40 T.A.C. § 90.216(a)(1).

KKO/rho

Ref.: ID# 26802

Enclosures: Open Records Letter No. 94-392
Submitted documents

cc: Ms. Joanne Summerhays
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(w/o enclosures)